

Internal Revenue Service
memorandum

CC:TL

Br4:RBWeinstock

date: 20 MAY 1987

to: District Counsel, Brooklyn

from: Director, Tax Litigation Division

subject: Disability Benefits For [REDACTED] County Police Officers

This is in response to your request for technical advice dated April 18, 1987, in the above-captioned matter.

Issues

1. Whether certain sick leave payments made under N.Y. General Municipal Law §207-c(1) to [REDACTED] County Police Officers for line-of-duty injuries are received under a statute in the nature of a workmen's compensation act and thus not includable in gross income pursuant to I.R.C. § 104(a)(1). 0104.02-00.

2. Whether such sick leave payments are excludable only to the extent the payments are reimbursed under N. Y. Workmen's Compensation Law §30(3). 0104.02-00.

Conclusion

1. The sick leave payments received under N.Y. General Municipal Law §207-c(1) are received under a statute in the nature of a workmen's compensation act.

2. The full amount of the sick-leave payments are excludable pursuant to I.R.C. § 104(a)(1).

Facts

Your request for technical advice concerns four cases involving this issue. Each case involves a [REDACTED] County Police Officer who allegedly sustained injuries in the line of duty which resulted in the receipt of sick-leave benefits. The police officers excluded from their federal income tax returns, the amount of the sick leave payments and deficiency notices were issued.

The Labor Contract between the County of [REDACTED] and the union representing the [REDACTED] County Police Officers includes provisions dealing with vacation, sick leave, and personal leave and under Section 8.11-4(A) of the employment contract, police officers are entitled to 26 days of sick leave for each full

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year of service. Section 8.11-4(B) provides that if a police officer exhausts his accumulated sick-leave he is entitled to one-half pay thereafter until his return to duty.

Neither section 8.11-4(A) or 8.11-4(B) distinguish between sick leave payments for line-of-duty injuries and sick-leave-payments for non-line-of-duty payments. The County of [REDACTED] Attorney's office has stated the these sections only apply to non-line-of-duty payments. Line-of-duty payments are provided in N.Y. General Municipal Law §207-c(1) (hereinafter §207-c(1)), and therefore, not provided for in the employment contract.

§207-c(1) provides in pertinent part that any police officer of any county :

who is injured in the performance of his duties or who is taken sick as a result of the performance of his duties so as to necessitate medical or other lawful remedial treatment shall be paid by the municipality by which he is employed the full amount of his regular salary or wages until his disability arising therefrom has ceased, and, in addition such municipality shall be liable for all medical treatment and hospital care necessitated by reason of such injury or illness.

In support of there position that they were paid pursuant to §207-c(1), each petitioner received a document from the [REDACTED] County Police Department stating that they were on sick leave from a line-of-duty injury which also states that the salary payments were made pursuant to §207-c(1).

Petitioners also argue that the sick leave payments were also paid pursuant to New York Workmen's Compensation Law §30(3) (hereinafter referred to as §30(3)), which interrelates with §207-c(1). §30(3) provides:

[I]n the case of an award of compensation to a member of a police force of any county... any salary or wages paid to, or the cost of any medical treatment or hospital care provided for, such member under and pursuant to the provisions of section two hundred seven-c of the general municipal law shall be credited against any award of compensation to such member under this chapter ...

According to a deputy county attorney, after a [REDACTED] County Policeman is injured in the line of duty, he is paid his full wages by the County in accordance with §207-c(1). A portion of these payments are reimbursed to the County pursuant to § 30(3) by Workmen's Compensation. The Deputy County Attorney has stated the the County attorney's office advises police officers

that they may exclude from taxable income that portion of their sick leave which the County is reimbursed for from Workmen's compensation. In these cases, however, the police officers excluded the full amount of the payments. In your request for technical advice, you propose that the Service take the position that the payments are excludable.

Analysis

I.R.C. § 104(a)(1) provides in pertinent part that gross income does not include amounts received under workmen's compensation for personal injuries or sickness....

Treas. Reg. § 1.104-1(b) provides in part:

Section 104(a)(1), excludes from gross income amounts which are received by an employee under a workmen's compensation act ... or under a statute in the nature of workmen's compensation act which provides compensation to employees for personal injuries or sickness incurred in the course of employment. ... However, section 104(a)(1) does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by occupational injury or illness. Section 104(a)(1) also does not not apply to amounts which are received as compensation for a nonoccupational injury or sickness nor to amounts received as compensation for an occupational injury or sickness to the extent that they are in excess of the amount provided in the applicable workmen's compensation act or acts.

OM [REDACTED], Disability Benefits for New York City Employees, [REDACTED], ([REDACTED]) (copy attached) considered similar issues involving whether certain payments to New York City employees were excludable under § 104(a)(1). Payments qualify for the section 104(a)(1) exclusion if they are paid for a work related injury, illness or death and are paid under a workmen's compensation statute or a statute which, because of its substantive provisions, "is in the nature of a workmen's compensation act". A statute will come within the definition of a "workmen's compensation act" for the purposes of section 104 only if the statute requires as a precondition of eligibility for benefits that the injury be incurred in the course of employment. "Statutes that do not restrict the payment of benefits to those cases of work-related injury or sickness are not considered to be 'workmen's compensation acts' under section 104." Take v. Commissioner, 804 F.2d 533 (9th Cir. 1986), 58 A.F.T.R.2d 86-6206, 86-6209 affirming T.C. Memo. 1985-388. See Rutter v. Commissioner, 760 F.2d 466, 468 (2d Cir. 1985); Haar

v. Commissioner, 78 T.C. 864, 868 (1982), aff'd., 709 F.2d 1206 (8th Cir. 1983). For example, in Take, the taxpayer received payments under a municipal ordinance that created an irrebutable presumption that certain illnesses were work-related. Because of the irrebutable presumption, the court noted that the municipal ordinance would serve to distribute substantial benefits to persons whose injuries were not work-related and therefore benefits were not restricted solely to those suffering work-related injuries.

§207-c(1) by its terms authorizes payments for a police officer "who is injured in the performance of his duties or who is taken sick as a result of the performance of his duties so as to necessitate medical or other lawful remedial treatment shall be paid by the municipality by which he is employed the full amount of his regular salary or wages until his disability arising therefrom has ceased." For a payment to be made under this provision, there must be a determination that the officer is suffering a work-related sickness or injury. Payments under §207-c(1) are not automatic, and it is not enough that a police officer asserts that he or she suffered a work related injury. Schenectady County Sheriff's Benevolent Association v. McEvoy, 488 N.Y.S.2d 966 (Sup. Ct. 1985). Cf. Callas v. City of Elmira, 451 N.Y.S.2d 922 (App. Div. 1982) (Sustaining determination denying a fireman benefits under N.Y. General Municipal Law 207-a because he failed to establish that the disability was caused by an injury occurring in his firemanic duties). Furthermore, the payment of benefits under §207-c is mandatory once it is established that a police officer has been injured in the course of his employment, and the officer cannot be divested of the benefits other than through his own acts. Ross v. Town Board of Town of Ramapo, 432 N.Y.S.2d 229 (App. Div. 1980). 1/

The Appeals Division considered this case to be controlled by Rutter, in which sick-leave payments were made pursuant to a union contract. However, we disagree that Rutter is controlling. The taxpayers here claim that they were paid under §207-c, not under the union contract or under an administrative code provision that made payments for both on-duty and off-duty illness and injury. They were not charged sick leave while receiving payments pursuant to §207-c, though they apparently did not accrue additional sick leave. See Anzalone v. City of Watertown, 500 N.Y.S.2d 913 (Sup. Ct. 1985). The fact they would have received payments under the employment contract for off-duty illness and injury does not affect the conclusion that the payments in the instant case were made under §207-c.

1/ The Attorney-General for the State of New York State has also interpreted §207-c to allow payments only for on-duty injuries and illnesses. Op. Atty Gen [Inf] 81-52.

In light of the foregoing, we believe New York General Municipal Law §207-c is a statute in the nature of a workmen's compensation act and payments made pursuant to §207-c to police officers for on-duty personal injuries are excludable under section 104(a)(1). From the materials submitted to us, it appears that the payments to the taxpayers were made under §207-c and thereby excludable.

You also requested our advice as to the portion of payments under §207-c that were excludable, insofar as the County is reimbursed pursuant to New York Workmen's Compensation Law §30(3) for a portion of the payments made under §207-c.

Treas. Reg. § 104-1(b) holds in part that section 104(a)(1) does not apply to amounts received as compensation for an occupational injury or sickness to the extent that they are in excess of the amount provided in the applicable workmen compensation's act.

Rev. Rul. 83-91, 1983-1 C.B. 38, considered the issue of whether a school teacher who elects a disability retirement allowance from the Maryland State Teacher's Retirement System for a work-related injury, instead of workmen's compensation, may exclude the entire disability retirement allowance under section 104(a)(1). The ruling held that the payments were made pursuant to a statute in the nature of a workmen's compensation act. The ruling then held that the full amount of the disability retirement allowance was excludable because the limitations in Treas. Reg. § 1.104-1(b) do not apply to payments made pursuant to a statute in the nature of a workmen's compensation act even if these payments are greater than payments under the workmen's compensation act.

This issue was also considered in OM [REDACTED], Section 104, I-279-81 (April 14, 1982) (copy attached). OM [REDACTED] concluded that the excludable amount under section 104(a)(1) is not limited to the amount provided in the general workmen's compensation act, even where two award determinations have been made -- one under the general workmen's compensation act and a second and more liberal determination under "a statute in the nature of a workmen's compensation act". Under the facts of your technical advice, we do not have two separate payments, but a simple reimbursement to [REDACTED] County under New York's Workmen's Compensation Act for payments made under §207-c. This reimbursement does not affect the portion of the payments which is excludable.

Like the disability retirement allowance in Rev. Rul. 83-91, the sick leave payments to the taxpayers in the instant cases were made pursuant to a statute in the nature of a workmen's compensation act, and therefore, the full amount of the payments are excludable.


Your request for technical advice indicated that one of the [REDACTED] police officers, [REDACTED], retired because of his duty-related injuries. From the materials you provided us, his petition is based on receipt of sick-leave benefits under §207-c and not on receipt of retirement benefits. For a discussion of the excludability of retirement benefits we refer you to OM [REDACTED].

If you have any further questions on this matter please contact Ronald B. Weinstock at FTS 566-3345.

Sincerely,

ROBERT P. RUWE
Director

By:


HENRY G. SALAMY
Chief, Branch No. 4
Tax Litigation Division

Attachments:

OM [REDACTED]

OM [REDACTED]